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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SEAN RYAN, an individual, on  
behalf of himself and all others  
similarly-situated,

Plaintiff,

vs.

JERSEY MIKE'S FRANCHISE  
SYSTEMS, a New Jersey corporation;  
KENNY BROTHERS, INC., dba  
JERSEY MIKE'S SUBS, a California  
corporation; CLUB TEXTING, INC.  
dba EZ TEXTING, INC., a New York  
corporation; SKYPOP PARTNERS,  
LLC, a Delaware limited liability  
company; and DOES 1 through 50,

Defendants.

CASE NO. 13-CV-1427-BEN (WVG)

**ORDER DENYING EX PARTE  
APPLICATION TO CONTINUE**

[Docket No. 46]

Before this Court is an Ex Parte Application to Continue Defendants' Motion to Deny Class Certification. (Docket No. 46). Defendants filed a Motion to Deny Class Certification on February 24, 2014. (Docket No. 45). Plaintiff filed the instant Ex Parte Application to Continue on March 7, 2014. Defendants responded on March 11, 2014. (Docket No. 49).

Plaintiff asks this Court to continue the hearing on Defendants' Motion to Deny Class Certification in order to allow him to conduct discovery. Defendants' Motion contends that discovery is not needed in this case to deny class certification.

If Plaintiff wishes to dispute Defendants' assertion that class certification can

1 properly be determined at this time, he must do so in a proper opposition. Indeed,  
2 Plaintiff's opposition argues that the motion is premature. (Docket No. 47). Although  
3 Plaintiff states that an ex parte motion was required because the time to respond would  
4 have elapsed before his request could be heard as an ordinary motion, the content of  
5 his motion is appropriate in the opposition brief. Plaintiff may not take two  
6 opportunities to attack the merits of Defendants' arguments; he is restricted to the  
7 opposition brief. If, as Plaintiff contends, it would be premature to deny class  
8 certification at this juncture, Defendants' Motion will be denied and the parties will  
9 have another opportunity to brief this Court on the class certification issue.

10 Accordingly, the ex parte motion is **DENIED**. In so ruling, the Court does not  
11 rule on the merits of Plaintiff's arguments that additional discovery is required. This  
12 Court will not consider the Ex Parte Application or Defendants' Opposition to the Ex  
13 Parte Application in ruling on the Motion to Deny Class Certification.

14 **IT IS SO ORDERED.**

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16 Dated: March 13, 2014

  
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HON. ROGER T. BENITEZ  
United States District Judge